In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.2359 of 2007.

Date of decision:3.5.2007.

Pale Ram.

...Petitioner.

Versus

Arun Kumar Jain.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.B.R.Gupta Advocate for the petitioner.

...

Judgment.

S. N. Aggarwal, J.

Arun Kumar Jain, respondent filed an ejectment petition against the petitioner under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act,1973 (in short Rent Act of 1973) on the ground that the petitioner has ceased to occupy the shop continuously for a period of more than four months with effect from November, 1998 without any sufficient cause. Other grounds of ejectment were also pleaded.

The case was contested by the respondent.

However, the ejectment petition was accepted by the

learned Rent Controller vide impugned order dated 17.1.2005 and an order of eviction was passed against the petitioner.

The petitioner filed an appeal against the said judgment. It was dismissed by the learned Appellate Authority vide judgment dated 13.3.2007.

Hence, the present petition.

The submission of learned counsel for the petitioner was that the learned Rent Controller has placed reliance on the statement of Rajender Singh PW1 who was an official from the Electricity Department and who had produced his affidavit as Exhibit PW1/A. He had deposed that account No.688-C of electricity was in the name of Radha Kishan and the premises were found locked. It was submitted that Radha Kishan was neither the landlord nor the tenant. No electric meter was installed in the shop in dispute. The electric meter was in the house from which electric connection was taken by the petitioner by extending the electric wires. Therefore, reliance cannot be placed on the statement of Rajender Singh, PW-1. It was further submitted that reliance was also placed on the report Exhibit P-5 submitted by the Local Commissioner who had visited the site without notice to the petitioner nor the Local Commissioner was examined. Hence, it was prayed these documents are liable to be ignored. It was also submitted that besides those documents, there is no other evidence in support of the version of the respondent-landlord.

Considered.

Admittedly, the Local Commissioner was appointed by the learned trial Court. A copy of the report has been proved on the trial Court file as Exhibit P-5. This report reveals that the Local Commissioner had visited the shop in dispute on three times on three different dates i.e. 1.5.2000, 8.5.2000 and 16.5.2000 and on all the three occasions, the shop was found locked by him. The Local Commissioner made enquiries from the neighbourers and one of the neighbourers had told the Local Commissioner that the key of the shop was with him. On the request made by the Local Commissioner, the shopkeeper in the neighbourhood took out the key and opened the shop in dispute through his employee Sanjay. It was found by the Local Commissioner that gas stoves were stocked in the shop and it was used as a godown. Thereafter the shop was again locked by said Sanjay. The Local Commissioner made enquiries from one Ram Lakhan who was a vegetable hawker standing with his Rehri opposite the shop in dispute who also confirmed that the shop in dispute remained closed for the last 1-1/2 years.

Even if the Local Commissioner was not produced as a witness by the respondent-landlord, the credibility of report, Exhibit P5, could have been got shaken by the petitioner by examining Sanjay or Ram Lakhan,vegetable hawker but the petitioner neither examined the Local Commissioner nor he has examined Sanjay or Ram Lakhan,vegetable hawker. The Local Commissioner was neither inimical towards the petitioner nor he was friendly with the respondent-

landlord. At-least, there is no allegation or evidence to that effect. The Local Commissioner was representative of the Court and, therefore, his report cannot be disbelieved merely on guess work or surmises. This evidence alone is sufficient to hold that the shop was lying closed.

Moreover, both the Courts below have given concurrent finding of fact that the shop in dispute was lying closed for more than four months without any sufficient cause.

As per discussion held above, there is no ground to interfere in the orders passed by the Courts below.

No merit.

Dismissed.

May 3,2007. (S. N. Aggarwal)
Jaggi Judge